SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 817

SUPERINTENDENT FIVE CIVILIZED TRIBES, FOR SANDY FOX, CREEK No. 1263, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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[fols. a & b] [Caption omitted]

[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 66375

SUPERINTENDENT FIVE CIVILIZED TRIBES, FOR SANDY FOX, CREEK NO. 1263, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appearances:

For Taxpayers: F. M. Goodwin, Esq., T. J. Reilly, Esq.
For Commissioner: B. M. Coon, Esq.

DOCKET ENTRIES

1932.

May 26. Petition received and filed. Taxpayer notified. (Fee paid).

May 26. Copy of petition served on General Counsel.

Jun. 20. Amended petition filed by taxpayer. 6/21/32 copy served.

Jul. 26. Answer to amended petition filed by General Counsel.

Sep. 7. Copy of answer served on taxpayer. General Calendar.

Sep. 30. Hearing set Dec. 13, 1932.

Dec. 13. Hearing had before Mr. Seawell, Div. 4. Referred to Mr. Black. Submitted on merits. Stipulation of facts filed. Petitioner's brief due in 30 days, reply 15 days. Respondent's brief due in 60 days. Ordered submitted on record and stipulation.

Dec. 21. Transcript of hearing December 13, 1932, filed.

1933.

Jan. 12. Brief filed by taxpayer.
Feb. 11. Motion for extension to Feb. 28, 1933, to file brief filed by General Counsel. 2/11/33 granted.
Feb. 28. Brief filed by General Counsel.

[fol. 2]

Mar. 13. Reply brief filed by taxpayer. 3/14/33 copy served.
Apr. 4. Memorandum filed by General Counsel.
Dec. 26. Opinion rendered, Mr. Black, Div. 15. Decision will be entered for the respondent.
Dec. 29. Decision entered, Div. 15, Mr. Black.

1934.

Jan. 27. Petition for review by U. S. Circuit Court of Appeals (10) with assignments of error filed by taxpayer.
Jan. 27. Proof of service filed by taxpayer.
Jan. 27. Præcipe with proof of service thereon filed.

BEFORE U. S. BOARD OF TAX APPEALS

PETITION—Filed May 26, 1932

The above named petitioner, hereby petitions for a redetermination of the deficiency as set forth by the Commissioner of Internal Revenue in his notice of deficiency dated March 29, 1932, symbols IT:AR:E-1 RCC-60D, and as a basis of this proceeding alleges as follows:

1. The said notice of deficiency (a copy of which is attached hereto and marked Exhibit A) is dated March 29, 1932. The petitioner has no knowledge as to the date it was mailed.

2. The taxes in controversy are income taxes for the calendar year 1929 in the sum of $269.59.

3. The determination of taxes as set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in including as income for the year 1929 an amount of $3,117.50 received as interest on a refund of income tax during the year 1929.

(b) The Commissioner erred in determining any deficiency against this taxpayer for the year 1929, as such determination is barred by the statute of limitations.

(c) The Commissioner erred in exacting any taxes from this petitioner for the year 1929.

[fol. 3] 4. The facts upon which the petitioner relies as a basis of this proceeding are:

(a) During the year 1929 the Commissioner determined that the petitioner was not subject to the Federal Income Tax laws and accordingly refunded sums of taxes which he determined to be illegally paid. In accordance with law, interest was refunded on these illegal payments in the amount of $3,117.50; this amount being received during the year 1929. The Commissioner has erroneously determined that this interest is subject to Federal Income Tax.

(b) The return of the petitioner for the year 1929 was filed and taxes paid on March 28, 1930. As the deficiency letter is dated March 29, 1932, any proposed deficiency is barred by the statute of limitations.

(c) Petitioner is a ward of the United States, being a member of the Creek Nation or Tribe of Indians, being enrolled opposite Creek Roll No. 1263. His property both real and personal is under the control of the United States, being under the direct supervision of the Superintendent of the Five Civilized Tribes, and under the direction and supervision of the Secretary of the Interior. The income from his allotment is received and held in trust by the said Superintendent and invested by him under the direction of the Secretary of the Interior; and the income interest upon such investments is likewise received and held by said superintendent as part of his restricted funds and property. Accordingly petitioner erroneously paid an income tax for the year 1929 in the amount of $102.59.